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NO. 88-1427

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS PENSION PLAN, WILLIAM WINPISINGER, EUGENE GLOVER and GEORGE KOURPIAS as fiduciaries and trustees of the INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS PENSION PLAN,

*Petitioners,*

v.

FRANK MEAGHER,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

## MOTION FOR LEAVE TO FILE AND BRIEF OF AMERICAN SOCIETY OF PENSION ACTUARIES AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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## MOTION OF THE AMERICAN SOCIETY OF PENSION ACTUARIES TO FILE BRIEF AS AMICUS CURIAE

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The American Society of Pension Actuaries (ASPA) hereby moves the Court pursuant to Supreme Court Rule 36.1 for leave to file the accompanying brief as Amicus Curiae in support of the Petition for Writ of Certiorari filed on March 1, 1989, in 88-1427.

In support of the motion ASPA states as follows:

1. This motion is necessitated by the failure of respondent Frank Meagher, upon request, to give consent to the filing of a brief by ASPA. Petitioner International Association of Machinists and Aerospace Workers, et al. has consented to the filing of the accompanying brief.

2. ASPA is a non-profit corporation established under 501(c)(6) of the Internal Revenue Code. ASPA has 2,700 members, nationwide. Its members are pension actuaries, consultants and administrators who perform services primarily for retirement plans in the private sector.

3. ASPA is an interested party because its members will be adversely affected by the decision of the United States Court of Appeals for the Ninth Circuit in *Meagher v. International Association of Machinists and Aerospace Workers*, 856 F.2d 1418 (9th Cir. 1988). The Circuit Court's ruling that the issuance of each monthly benefit check gives rise to a new cause of action for benefits and hence commences anew the running of the participant's limitations period has severe negative implications for the administration and financial well-being of all employee retirement plans. No longer will plans have any assurance that a benefit decision is ever final and unchallengeable. ASPA believes that the ultimate impact of the Ninth Circuit's decision will be to undermine the financial stability of employee retirement plans and thereby reduce the number of such plans.

4. ASPA is in a unique position to advise the Court with regard to the implications of the *Meagher* decision because of its intimate familiarity with the actuarial, administrative and financial operations of employee retirement plans.

WHEREFORE, ASPA respectfully requests leave to file the accompanying brief as amicus curiae.

Dated: March 31, 1989

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## QUESTION PRESENTED FOR REVIEW

1. Whether the Ninth Circuit erred in concluding that a plaintiff's limitations period recommences each time an allegedly inadequate benefit payment is made?

## LIST OF PARTIES

The parties to the proceedings below were the petitioners, The International Association of Machinists and Aerospace Workers Pension Plan, William Winpisinger, Eugene Glover and George Kourpias as fiduciaries and trustees of the International Association of Machinists and Aerospace Workers Pension Plan, and the respondent, Frank Meagher.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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## BRIEF OF AMERICAN SOCIETY OF PENSION ACTUARIES AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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The American Society of Pension Actuaries submits this brief, amicus curiae, pursuant to Rule 36.1 of the Rules of the Supreme Court of the United States in support of the petitioner.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 856 F.2d 1418. The opinion of the District Court for the Northern District of California is unreported.

## JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was entered on September 12, 1988. On December 1, 1988, the Ninth Circuit denied a petition for rehearing. A petition for a writ of certiorari was timely filed and this Court's jurisdiction invoked pursuant to 28 U.S.C. Section 1254(1).

## STATEMENT OF THE CASE

Respondent Frank Meagher (hereinafter "Meagher") retired under the IAM Pension Plan (hereinafter "Plan"), a defined benefit plan, on July 1, 1977, and has been receiving benefits since that date. Meagher's complaint, filed May 13, 1986, sought payment of additional pension benefits by challenging the lawfulness of an amendment adopted more than nine years earlier which phased out a post retirement benefit adjustment. This post retirement benefit adjustment provided for an increase in a retiree's monthly benefit in proportion to any salary increase in the position from which the individual retired and was commonly referred to as the "living pension" feature.

Because of adverse financial experience, the Plan's actuaries recommended remedial action, including elimination of the "living pension" feature. An amendment phasing out the "living pension" feature was adopted. In 1979, a letter and summary plan description were sent to Meagher, and all other retirees, explaining how this amendment affected them.

On May 13, 1986, Meagher filed a complaint alleging that the amendment phasing out the "living pension" feature was improperly adopted. The Plan asserted as an affirmative defense, among other things, that Meagher's action was barred by the applicable statute of limitations. On May 22, 1987, the United States District Court for the Northern District of

California dismissed the complaint as untimely filed. The Court found that, in any event:

> "... the statute of limitations began to run at the latest in mid-October, 1979, when plaintiff received a letter from the Union explaining that it was phasing out the living pension. At that time, Meagher had knowledge of the events which gave rise to the course of action."

In an opinion dated September 12, 1988, the Ninth Circuit reversed the District Court and determined that Meagher's complaint was not barred by the statute of limitations. The basis for the District Court's opinion was the novel theory that each benefit check issued in an amount less than claimed by Meagher created an independent cause of action, and the limitation period runs separately for each cause of action.

On December 1, 1988, the Ninth Circuit denied the Plan's petition for rehearing.

## INTEREST OF THE AMICUS CURIAE

The American Society of Pension Actuaries (ASPA) is a non-profit organization whose 2,700 members provide actuarial, consulting and administrative services to approximately 30 percent of the private qualified retirement plans in the United States.

One of ASPA's primary purposes is the preservation and enhancement of the private qualified retirement system in the United States. It is our view that the decision of the Ninth Circuit Court of Appeals in Meagher, unless reversed, will have a significant adverse effect on that system by allowing participants receiving lifetime periodic payments to challenge the accuracy of the original benefit determination until death, and the estate to sue thereafter. Periodic payments for life

is a common form of benefit payment from private qualified retirement plans, and a form appropriate to the goal of providing financial security in retirement years. It should be noted that, given current trends in longevity, many retirees will receive periodic payments for 25 years or longer. Renewing the exposure period for challenge to the accuracy of the original benefit determination each time a payment is made will severely inhibit the ability of any plan making periodic payments to engage in rational financial planning, and make employers much less willing to install or continue such plans. It should be further noted that qualified retirement plans are voluntary arrangements not mandated by law, and that it is vital to our national interest that we not create deterrents to the viability of that system.

It is also important to consider the current legal environment in which private qualified retirement plans must operate. These plans, by their very nature, are complex arrangements. They have been made much more so by a profusion of legislation in recent years changing the applicable rules.

Since 1982, we have seen four major acts, each with a profound impact on private qualified retirement plans, TEFRA (Tax Equity and Fiscal Responsibility Act) in 1982, DEFRA (Deficit Reduction Act) and REA (Retirement Equity Act) in 1984, and the TRA (Tax Reform Act of 1986). Each of these legislative rounds necessitated a multiplicity of complex plan amendments. Since most plan administration is computer assisted, the programs written to administer the plans must be revised to conform to whatever administrative differences result. All plan participants affected by change must be notified in one fashion or another. Regulations are rarely issued less than a year after the legislative change, causing further uncertainty and confusion. All this adds significantly to the administrative complexity and increases the possibility of

challenge to a benefit determination. The concept of each benefit check constituting a separate cause of action would create severe difficulties to private qualified retirement plans, assuming there had been a stable legislative environment. Given the rapidity of changes described above, the severity of the problems that this concept will cause will be greatly magnified.

There are about 900,000 private qualified retirement plans in existence in the United States, with assets of approximately 1 1/2 trillion dollars. These plans provide vitally needed retirement benefits to millions of our citizens, as well as play a vital role as a source of investment capital for our economy.

Of course, as our population ages, the need for private qualified retirement plans will intensify. The segment of the population age 65 and older has been increasing at a far more rapid rate than the rest of the population. It is estimated that by 2030, 21 percent of all Americans are expected to be 65 or older, compared with only 11 percent in 1980, which represents more than a 60 percent increase.

As stated above, we believe that *Meagher*, if not reversed, will have a significant negative effect on the private qualified retirement plan system and we urge the Court to consider this factor, as well as the legal arguments, and grant certiorari in this case.

## SUMMARY OF ARGUMENT

The Ninth Circuit erred in concluding that each periodic benefit check constituted a new cause of action. The decision in *Meagher* is inconsistent with decisions of this Court and of other Circuits, will cause serious damage to the private qualified retirement system, and will burden the federal courts with a higher level of employee benefit litigation.

## ARGUMENT

### A. THE NINTH'S CIRCUIT'S RULING THAT THE ISSUANCE OF EACH PERIODIC BENEFIT CHECK CREATES A SEPARATE CAUSE OF ACTION IS IN CONFLICT WITH THE DECISIONS OF OTHER CIRCUITS IN EMPLOYEE BENEFIT CASES

By holding that the issuance of each allegedly inadequate benefit check constituted a "wrongful application" of the Plan, the Ninth Circuit has created a continuing violation approach to benefit claims which permits a plaintiff receiving lifetime payments to sue until his or her death, and the estate to sue thereafter. Other courts have consistently held that a cause of action for employee benefits arises only when the plaintiff initially learns that an unambiguous decision has been made affecting his benefits. *Martin v. Bankers Trust,* 565 F.2d 1276, 1278 (4th Cir. 1977); *Cowan v. Keystone Profit Sharing Fund,* 586 F.2d 888, 895 (1st Cir. 1978); *Paris v. Wolf, Inc., Profit Sharing Plan, Etc.*, 637 F.2d 357, 360-361 (5th Cir. 1981), *cert. denied,* 464 U.S. 836 (1981); *Belland v. Pension Benefit Guaranty Corp.*, 4 E.B.C. 1162, 1165-1166 (D.D.C. 1983), affd, 726 F.2d 839 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 880 (1984).

Thus the decision of the Ninth Circuit is clearly in conflict with those of other Circuits.

### B. THE NINTH CIRCUIT'S RULING AS TO WHEN A CAUSE OF ACTION ACCRUES IS IN CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS WITH RESPECT TO OTHER PROTECTIVE STATUTES

In *United Airlines, Inc. v. Evans,* 431 U.S. 553, 559 (1977), this Court held that a discriminatory act begins the running

of the limitations statute even if the act has later consequences. In *Chardon v. Fernandez* 454 U.S. 6, 8-9 (1981), this Court held that an actionable situation is not created as a result of a continuing impact from past violations.

Other courts have found that continuous activity after a union's initial failure to respond to a grievance request does not constitute a continuing violation with respect to suits involving allegations of denial of fair representation pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C., Section 185. *Adams v. Budd Co.*, 846 F.2d 428, 431 (7th Cir. 1988), *cert pending; Metz v. Tootsie Roll Ind., Inc.* 715 F.2d 299, 305-6 (7th Cir. 1983). In a case brought under Railway Labor Act, it was concluded that the union activity subsequent to the time the challenged agreements were concluded does not constitute a continuing violation. ***Englehardt v. Consolidated Rail Corp.***, 756 F.2d 1368, 1370 (2d. Cir. 1985).

## C. THE NINTH CIRCUIT'S RULING IS INCONSISTENT WITH THE FUNDAMENTAL PURPOSE OF A LIMITATIONS STATUTE AND WILL BE PARTICULARLY HARMFUL IN THE RETIREMENT PLAN AREA

Determinable limitation periods are vital to insuring fairness to potential defendants and to encouraging stability in economic relationships. It is both inequitable and productive of financial chaos to keep potential defendants at risk indefinitely because of determinations made and communicated many years earlier.

In the instant case, the Ninth Circuit has concluded that the receipt of each periodic benefit check creates a new cause of action. The determination as to the amount to which an individual is entitled is made prior to the time benefits commence

and may be recalculated at a later date if the terms of the benefit plan or amendments thereto change the original benefit amount. The issuance of each check is a ministerial act implementing a prior determination. The theory that each benefit check constitutes a new cause of action is inconsistent with the fundamental concept that a limitation period begins when an individual becomes aware of the facts which would enable him or her to seek legal redress.

It should be noted that retirement plans frequently provide lifetime payments. Given current trends in longevity, it would not be unusual for retirement plans to be paying benefits to a retiree for 25 years or longer. If the ruling of the Ninth Circuit were to prevail, it is obvious that challenges to benefit entitlement determinations could be made decades after these determinations were made. Such an exposure would be extremely detrimental to the private qualified retirement system.

## CONCLUSION

It is our view that *Meagher* is legally incorrect, will cause serious damage to the private qualified retirement system, and will burden the federal courts with a much higher level of employee benefit litigation. We ask therefore that the writ of certiorari be granted.

Respectfully Submitted,

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